

March 8, 2012

SUBMITTED ELECTRONICALLY

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Re: ZEV Over-Compliance Credits Provision

Chrysler appreciates this opportunity to provide further comments regarding the ARB's adoption of Title 13 California Code of Regulations Section 1962.2(g)(6)(C) ("GHG-ZEV Over-Compliance Credits"), on which the Board has issued a 15-day Notice of Public Availability of Modified Text. That provision amends the ZEV Standards for 2018 and later model years, as codified at California Code of Regulations Section 1962.2. The Board should withdraw this provision as it is contrary to California's environmental goals and is illegal.

Chrysler is taking this opportunity to reiterate its concerns expressed in Chrysler's January 24, 2012, comments regarding California's proposed Advanced Clean Cars (LEV III) and Zero Emission Vehicle (ZEV) regulations, and specifically the provisions allowing credits generated through over-compliance with the national greenhouse gas (GHG) emissions standards to be applied to reduce California ZEV obligations. This enables manufacturers to substitute sales outside of California of vehicles with internal combustion engines for sales of electric vehicles in California. At bottom, as explained in Chrysler's earlier comments, this provision is a give-away to certain auto manufacturers that will result in a net increase in emissions of criteria air pollutants and precursors as well as toxic air contaminants, has no GHG emissions benefits, and undermines the objective to commercialize zero emission drive technology. The Board has nowhere justified this relaxation under the Board's governing statutory authority and the increase in ROG + NO_x that this provision will cause, which California AQMDs rely upon for achieving compliance with National Ambient Air Quality Standards ("NAAQS"). Finally, as a procedural matter Chrysler is concerned that, at the ARB hearing on January 26, 2012, the Board did not engage in discussion or consideration of these serious objections to this provision.

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1. *The GHG Over-compliance Credits Provision Will Increase Emissions of Criteria Pollutants and Toxic Air Contaminants.*

Chrysler urged in its earlier comments that the Board consider the ROG + NO_x benefits of the ZEV program that AQMDs have relied upon in their State Implementation Plans ("SIPs") and that will be foregone by allowing over-compliance with the national GHG standards to substitute for ZEV compliance. In effect, rather than producing ZEVs that achieve reductions in ROG + NO_x, certain manufacturers with internal combustion product lines better positioned to achieve higher fuel economy will substitute such vehicles that over-comply with the national GHG standards but do not have lower ROG + NO_x emissions or emissions of toxic air contaminants as ZEVs do. Chrysler is not aware that the Board has undertaken such an analysis, but based on preliminary Chrysler analyses, the GHG-ZEV Over-compliance Credits provision will result in additional ROG + NO_x emissions to California's inventory, and will cause additional toxic air contaminants as well. As a result, by adopting the GHG-ZEV Over-compliance Credits provision, the Board's action fails to obtain the maximum benefit the ZEV program could achieve without the Over-compliance provision.

2. *The GHG Over-compliance Provision Conflicts with the Board's Obligations under the Health and Safety Code and Undermine California's SIP.*

In Section 43000 of the Health and Safety Code, the California Legislature has declared that the emission of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State, and Sections 39002 and 39003 of the Health and Safety Code charge the Board with the responsibility for controlling such air pollution. More specifically, Section 43018(a) of the Health and Safety Code directs the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of State ambient air quality standards at the earliest practicable date. Similarly, Section 39667 of the Health and Safety Code directs the Board to set standards to achieve the maximum possible reduction in public exposure to substances that the Board has identified as toxic air contaminants pursuant to section 39662 of the Health and Safety Code; such regulations affecting new motor vehicles are to be based on the most advanced technology feasible for the model-year and may include, but are not limited to, the required installation of vehicular control measures on new motor vehicles.

Specifically regarding ozone nonattainment, the Board is responsible for the mobile source portion of the State Implementation Plan ("SIP") strategy for attaining the NAAQS for ozone in all areas of the State. Part of that element in the SIP is to rely on the California Low-Emission Vehicle (LEV) program to provide significant reductions of

March 8, 2012

Page 3

ozone precursor pollutant emissions from passenger cars and light-duty trucks and to reach the 1997 ozone standard by the attainment date in 2023, with emissions of nitrogen oxides ("NO_x") in the greater Los Angeles region reduced by two-thirds. *See* 40 C.F.R. Part 52, Subpart F.

The Board's relaxation of the ZEV requirements for manufacturers who over-comply with the national GHG standards violates these statutory directives and undermines the SIP strategy. In theory, the Board could relax the ZEV requirements if they were not achievable. But in fact the Board has not demonstrated that the ZEV requirements with resulting reductions in ROG + NO_x and toxic air contaminants are not achievable. Indeed, the ARB has taken the position in promulgating the ZEV requirements that they *are* achievable and *will* result in such emissions reductions. To relax those requirements, the ARB would have to abandon its earlier conclusions that the ZEV requirements represent the maximum achievable emissions reductions that the Health & Safety Code requires the ARB to adopt. The Board has not done this and thus relaxation of the ZEV requirements is prohibited.

Indeed, the ARB has not shown that the GHG-ZEV Over-Compliance Credits regulations will achieve *any* emissions benefits of any kind, including GHG emissions. Of course, ZEVs emit no GHGs from the tailpipe, and even accounting for upstream emissions (to generate electricity powering the ZEVs), overall GHG emissions are lower. The ARB has not shown that the retired credits from over-compliance with the national GHG standards would more than offset the loss of GHG benefits from the sale of ZEVs. Furthermore, the primary goal of the ZEV program is to increase volumes of ZEV technology vehicles in the marketplace to reach a critical mass and thereby achieve even greater GHG, ROG + NO_x, and toxic air contaminant reductions. Reducing ZEV obligations works counter to these stated air emissions objectives. In short, the ARB has offered *no explanation whatsoever of the environmental rationale for crediting GHG over-compliance to reduce ZEV obligations.*

Regardless of potential GHG impacts from the proposed GHG-ZEV Over-Compliance Credit provision, even if the GHG over-compliance provision were to achieve net GHG benefits, reductions of GHGs should not override the Board's obligation under the Health and Safety Code to achieve maximum reductions in criteria pollutants and air toxics. Emissions of these pollutants have direct health effects in California, and the cost to industry to reduce such pollutants is dramatic. *See* South Coast Air Quality Management District Annual RECLAIM Audit Report for 2009 Compliance Year, *available at*: <http://www.aqmd.gov/hb/attachments/2011-2015/2011Mar/2011-Mar4-041.pdf> (citing costs of \$8,052 per ton for Compliance Year 2011 NO_x credits).

March 8, 2012

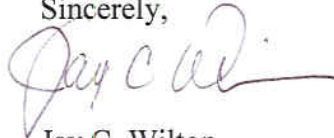
Page 4

In sum, the proposed GHG- ZEV Over-Compliance Credits provision seek to impose requirements that are outside the scope of the Board's statutory authority. Under Cal. Govt Code Section 11342.2, "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purposes of the statute." Because the proposed regulations conflict with and fail to effectuate the purposes of the statute, ARB should withdraw the GHG-ZEV Over - Compliance Credits provision.¹

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For all of the foregoing reasons, Chrysler again respectfully requests that the Board withdraw the GHG-ZEV Over-Compliance Credits provision.

Sincerely,



Jay C. Wilton
Vice President, Engineering Planning and
Regulatory Compliance

cc: Reginald R. Modlin, Chrysler

¹ A reviewing court has a non-discretionary duty to grant relief to invalidate agency actions that exceed the scope of the agency's authority. *Cal. Assn. of Psychol. Providers v. Rank*, 51 Cal. 3d 1, 7 (1990). Judicial relief is available through a declaratory relief action or a petition for a writ of mandate. *See Agnew v. State Board of Equalization*, 21 Cal. 4th 310, 321 (finding that validity of agency policy was a question "properly raised through a declaratory relief action" under Cal. Govt Code § 11350 and that plaintiff was not required to exhaust administrative remedies before filing judicial action); *Association of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.*, 168 Cal.App.4th 535 (2008) (challenging agency regulation through a writ of mandate under Cal. Code of Civ. Proc. § 1085).